

PUBLIC LAW BOARD NO. 4450

AWARD NO. 56
NMB CASE NO. 56
UNION CASE NO. C-326-267
COMPANY CASE NO. 9303471

PARTIES TO THE DISPUTE:

UNION PACIFIC RAILROAD COMPANY
(Western Region-Feather River)

- and -

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

STATEMENT OF CLAIM: Claim of Engineer A. J. Bakker, timeslip #p--13 dated August 7, 1993 for 122 miles not allowed to tie-up for undisturbed rest (UDR).

OPINION OF BOARD: In August 1993, Engineer A. J. Bakker (Claimant) was working pool freight service between La Grande and Hinkle, Oregon with the Home terminal of La Grande. On August 7, 1993 Claimant was called to GLNPHS/02 on duty at LaGrande at 0235 and tying up at Hinkle at 1329. Approximately eleven (11) hours later, Claimant was called on duty at 2142 to deadhead from Hinkle to LaGrande, arriving at 2330. The deadhead from Hinkle, Oregon (the away-from-home terminal) to LaGrande, Oregon (the home terminal) was a total of 105 miles consuming a total time of two (2) hours.

Upon arrival at La Grande Claimant reviewed his board standing and found he was three times out. He called CMS and attempted to lay-off undisturbed rest (UDR) for a eight (8) hour period. Therefore, following that two (2) hour deadhead,

Claimant requested eight (8) hours undisturbed rest at his home terminal. The CMS Shift Manager would not allow Claimant to tie-up UDR and refused to guarantee Claimant the eight (8) hours UDR. Claimant was called 11 hours 25 minutes later for Carrier's GLCOVC02 train.

Subsequent to the denial of the undisturbed rest, a claim was filed as quoted in employee's statement of claim, indicating a violation of Rule 103 of the Schedule Agreement between the Union Pacific Railroad Company and the Brotherhood of Locomotive Engineers, as follows:

REST PERIODS

"(a) When engineers claim needed rest, they shall so specify on the Federal register and they shall not be disturbed during such rest period.

(b) In the application of Section(a) of this rule, an engineer may request a rest period of eight (8) hours if he has been on duty less than sixteen (16) continuous hours or ten (10) hours if he has been on duty sixteen hours continuously by so indicating on the register at time relieved from duty.

(c) Where an "undisturbed" rest period is requested and so specified on the Federal register under the conditions prescribed in Section (b) hereof, the crew calling forces will not contact the engineer for a call -- either to deadhead or to perform service -- during the rest period.

Note 1: The provisions of Section (a), (b) and (c) of this rule shall apply at home terminals, away-from-home terminals and at tie-up points for engineers in road freight service and at home terminal for engineers in yard and helper service.

Note 2: Under no circumstances may an engineer request a rest period in excess of eight or ten hours where and when applicable in the applications of Sections (a) and (b) of this rule.

Note 3: Where an engineer requests an 'undisturbed' rest period of eight (8) or ten (10) hours pursuant to Sections (a) and (b)

of this rule and, except for such action, he would have stood for service at an earlier time or he would have been used in service or deadheaded except for such action, the engineer so involved shall have no basis for a penalty claim against the Company account not being called in turn or used in service or deadheaded for service, etc.

Note 4: The provisions of Sections (a) and (b) of this rule shall not apply unless engineers clearly make notation of Federal register that they are requesting 'undisturbed' rest and for failure to make such a notation, the engineer affected may be called and used in accordance with other applicable rules of this agreement.

Example: Engineer 'A' requests eight hours of 'undisturbed' rest, from tie up time of 7:40 a.m. Under this rule an engineer requesting eight hours of 'undisturbed' rest will not be called to perform service or to

deadhead until 3:40 p.m."

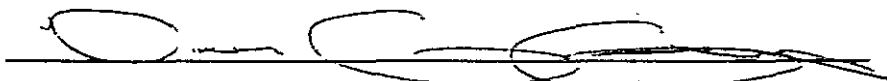
The principles which govern disposition of this claim have been set forth in detail in Awards 1 and 2 of PLB 3623, UP/BLE (Referee D. Eischen). Although the rule language in the Divisional Agreement involved in those cases was slightly different, the same fundamental concepts apply here, i.e., the UDR Rule never was intended to allow an Engineer to tie up for rest on every trip, the BLE and responsible engineers understand that UDR is to be used with restraint and only when rest really was necessary, and "penalty" payments should not be allowed for insubstantial, technical or de minimis failures to provide properly requested UDR. Within those parameters, the Engineer has a contractual entitlement to request and receive UDR, without second-guessing by CMS.


Each such case must turn upon its own individual set of facts. Applying the above-described principles to the facts of this record, we conclude that this claim must be sustained. Claimant's two hour deadhead did constitute being "on duty less than sixteen (16) hours", he had made 2 roundtrips in 2 days, he stood third out for a third trip with the possibility of being called again in six or seven hours and he made a proper request for UDR. This fact pattern might well be seen as "pushing the envelope" of the agreed upon interpretation and application of

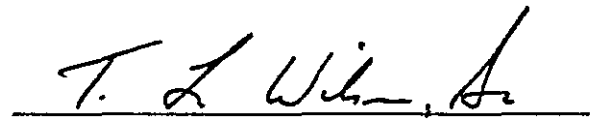
Rule 103 to outer limits, but we are not persuaded that Claimant abused his privilege under the Rule or frivolously invoked UDR in these circumstances. As it turned out, CMS could have and should have granted his request and the failure to do so was a violation of Rule 103 for which exemplary damages must be awarded.

AWARD

Claim sustained


Dana Edward Eischen, Chairman
Dated at Ithaca, New York on September 13, 1995


Union Member


Company Member